SUBJECT INDEX

Page

I.

The Petition of Case-Swayne Co., Inc., for Certiorari Should Be Denied 2

A. The District Court and the Ninth Circuit Determined a Factual Issue Within Rules of Law Recently Laid Down by This Court 2

B. The Structure of the Sunkist System 3

C. The Same Basic Elements of the Sunkist System Were Reviewed in the Winckler Case 6

D. The Opinion of the Court of Appeals 7

II.

Plaintiff's Argument Lacks Support in the Statute or Case Law 9

A. Summary of Plaintiff's Argument 9

B. Fallacies in Plaintiff's Syllogism 10

1. An Agency Association May Be a Member Without Affecting the Capper-Volstead Exemption 10

a. The Capper-Volstead Act 10

b. The Presence in the Sunkist System of Non-Grower Entities Other Than Agency Associations Has Not Affected Sunkist's Capper-Volstead Qualification 12

c. There Is No Material Economic Significance in the Use of Agency Associations 13

2. For Purposes of the Capper-Volstead Act, Agency Associations Are Not "Members" 13

Page

3. United States v. Borden Co., 308 U.S. 188 (1939) Has No Application to Determination of Capper-Volstead Qualification 15

III.

Conclusion 17

Appendix I. Stipulation of Relevant Facts and Material Issues of Law Relative to Issue Raised by Capper-Volstead Defense .....App. p. 1

TABLE OF AUTHORITIES CITED

Cases — Page

Case-Swayne Co. v. Sunkist Growers, Inc., 369 F. 2d 449 9

Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 370 U.S. 19....1, 2, 3, 6, 8, 12, 13, 14

United States v. Borden Co., 308 U.S. 188 ..15, 16, 17

United States v. Maryland and Virginia Milk Producers Assn., 362 U.S. 458 16

Statutes

Capper-Volstead Act, Sec. 1 .....1, 10

United States Code, Title 7, Sec. 291 10

IN THE

Supreme Court of the United States

October Term, 1966
No. 1157

CASE-SWAYNE CO., INC.,

Petitioner,

vs.

SUNKIST GROWERS, INC.,

Respondent.

BRIEF OF SUNKIST GROWERS, INC. IN OPPOSITION TO THE PETITION FOR CERTIORARI FILED BY CASE-SWAYNE CO., INC.

Case-Swayne Co., Inc., seeks to obtain review of the decision of the Court of Appeals for the Ninth Circuit that Sunkist Growers, Inc., is a qualified cooperative within the meaning of §1 of the Capper-Volstead Act. This issue was presented on a stipulated set of facts and both the District Court and the Ninth Circuit concluded that Sunkist was so qualified. This Court has previously reached the same conclusion in the case of *Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co.*, 370 U.S. 19 (1962), a case in which the factual record was less extensive, but in which the underlying principles for the construction of the Capper-Volstead Act were clearly enunciated.

I.

THE PETITION OF CASE-SWAYNE CO., INC. FOR CERTIORARI SHOULD BE DENIED.

A. The District Court and the Ninth Circuit Determined a Factual Issue Within Rules of Law Recently Laid Down by This Court.

The Petition for Certiorari should be denied because it simply raises an issue of fact: Does the Sunkist system meet the organizational tests for Capper-Volstead qualification laid down in a unanimous opinion of this Court less than five years ago in the *Winckler* case, *supra*.

The petitioner contends that certain "members" of the Sunkist System—agency packing houses—are not growers and that Sunkist therefore cannot qualify under the Capper-Volstead Act. This Court laid down rules in the *Winckler* case which show that that contention is unsound.

This Court there held that the "members" of the Sunkist System within the meaning of the Capper-Volstead Act were the 12,000 growers of citrus fruit who marketed their fruit through the Sunkist System, and who received the economic benefit from its operation, and that the entire System was in effect one "association", even though the growers had formally organized themselves into several distinct legal entities. This holding was based on the fact that the formal organizational distinctions between the different legal entities within the cooperative were not of practical, economic significance to the growers, the consumers or the public.

The Courts below have made the same factual determination in this case, and reached the same conclusion. We believe that this conclusion is inescapable. The stipulation of facts on which this issue was tried states clearly and unequivocally that the agency packing houses handle a grower's fruit on a cost plus fixed fee basis, and do not participate in either the gains or losses involved in the cooperative marketing of the fruit through the Sunkist System.

Furthermore, the activities of the Agency Associations are the clearest kind of legitimate cooperative activities: picking, washing, sorting, grading, packing and shipping fruit of the grower who markets through the Sunkist System.

The determination is therefore entirely consistent with the rules heretofore laid down by this Court and with the purpose and requirements of the Capper-Volstead Act.

B. The Structure of the Sunkist System.

The factual record in this case[1] is more extensive than it was in the *Winckler* case. The record here shows that the Sunkist System is made up of a number of elements:

1. *Growers.* Growers (individuals, partnerships, corporations, trusts and estates) produce oranges independently. Sunkist Growers, Inc. does not participate in growing oranges.

---

[1]The parties have entered into a Stipulation of Relevant Facts and submitted to the trial court the issue as to whether Sunkist was qualified under the Capper-Volstead Act. Since that Stipulation was not attached to the Petition, we have attached it hereto as Appendix 1. The facts which are stated herein are based on that Stipulation, unless otherwise noted.

2. *Associations.* Oranges, once brought to maturity, must be picked and prepared for sale. These functions of picking[2], washing, sorting, grading, packing and shipping are performed by packing houses. Three different kinds of arrangements are made by growers with packing houses:

a. *Cooperative Associations.* About 80% of the oranges in the Sunkist System are processed by cooperative associations. These are farmer cooperatives which own their own packing houses.

b. *Corporate Growers.* About 5% of the oranges in the Sunkist System are handled by corporate growers. These are growers (not necessarily, but often corporations) who own their own packing houses.

c. *Agency Associations.* The remaining 15% of the oranges in the Sunkist System are handled by Agency Associations. An individual grower may employ an Agency Association to process his fruit and market it through the Sunkist System.[3] The economic results of such operations are the same as those of the Cooperative Association, except that the grower employs the Agency Association to pick and prepare the oranges for sale on a cost plus fixed fee basis. The benefits of cooperative marketing are thus returned to the grower from Sunkist, through the Agency Association.

[2]While some growers pick their own fruit, most picking is done by specialized crews from the packing houses.

[3]In those cases in which the stockholders of the Agency Association also grow fruit, their fruit is handled on a uniform basis with that of non-stockholders.

The Stipulation between the parties expressly sets forth this fact:

> **"The Agency Association does not itself participate in either the gain or loss involved in marketing fruit through Sunkist beyond the recovery of its costs and fixed fee for packing. Such Agency Association furnishes facilities and services on an independent contract basis, wholly unrelated to the net returns from the sale of the product handled."** (Appendix 1, Para. 4, page 4.)

The economic operation of the Sunkist System is further explained by the Stipulation:

> "From an accounting standpoint, all members of the Sunkist System beyond the grower (with the exception of the Agency Associations as hereafter noted) operate on a strict cost basis, remitting to the grower, through the channels of the System, all marketing proceeds in excess of reimbursement of actual costs, and deductions or assessments for maintenance of authorized reserves or grower capital. The Agency Associations return to their growers all of the proceeds of marketing over their actual cost plus the fixed fee per box." (Appendix 1, Para. 9, p 13.)

Thus, whether the grower has his fruit processed by a Cooperative Association, an Agency Association, or his own packing house, he receives all of the benefits and bears all of the risk of cooperative marketing through the Sunkist System.

3. *District Exchanges.* The associations are organized into District Exchanges, for organizational and

accounting purposes. The members of a District Exchange are the associations it represents.

4. *Sunkist Growers, Inc.* The corporation, Sunkist Growers, Inc., is a nonprofit corporation. It serves as the marketing agency for all growers affiliated with the Sunkist System. Prior to 1958, the members of this corporation were individuals appointed by and representing each District Exchange. Since 1958, the members of Sunkist Growers, Inc. have been the District Exchanges and the packing houses. [Pltf. Ex. 1A—Sunkist's Amended Articles of Incorporation and By-Laws.]

5. *Other Elements.* The Sunkist System has processing facilities and other functions more particularly described in the Stipulation between the parties. Until 1958, two related corporations were Exchange Orange Products Company and Exchange Lemon Products Company, which provided other processing and sales facilities for the Sunkist System. In 1958, they were merged into Sunkist Growers, Inc.

C. The Same Basic Elements of the Sunkist System Were Reviewed in the Winckler Case.

In the *Winckler* case this Court was clearly aware of the fact that the Sunkist System was a federated structure consisting of a number of distinct legal entities. The Court there noted as follows:

> "Sunkist Growers, Inc. has at its base, 12,000 growers of citrus fruits in California and Arizona. These growers are organized into local associations which operate packing houses. The associations in turn are grouped into district exchanges, and representatives from these exchanges make up the

governing board of Sunkist, a nonstock membership corporation. Sunkist serves the members as an organization for marketing their fresh fruit and fruit products [footnote omitted] through its field, advertising, sales, and traffic departments. All of its net revenues are distributed to the members.

. . . .

"In sum, the individual growers involved each belong to a local grower association. Fruit which is to be sold fresh is packed by the associations and marketed by Sunkist, a nonstock membership corporation comprised of district exchanges to which the associations belong. Most fruit which is to be processed into by-products is handled by Exchange Orange, a subsidiary of Sunkist, or by Exchange Lemon, a separate organization comprised of a number of Sunkist member associations. [Footnote omitted.] It is then marketed by the products department of Sunkist which is managed by directors of Exchange Orange and Exchange Lemon." (370 U.S. 19, 21-22.)

The Court thus had the entire Sunkist System before it, but it was not specifically asked to consider the differences in operation of the various kinds of packing houses.

D. The Opinion of the Court of Appeals.

The Court of Appeals clearly recognized that the details of organization complained of in this case[4] are dif-

[4]Plaintiff has shifted its target on several occasions. Its initial attack on the Sunkist System [see Clk. Tr. p. 901] was

(This footnote is continued on the next page)

ferent from those discussed in the *Winckler* case, and it carefully applied the legal rules laid down there to the facts here under scrutiny. The Court of Appeals observed: "It is true, as appellant argues, that this issue was not specifically raised in the *Winckler* case, but the Court did describe the Sunkist organization in detail." (369 F. 2d 449, 460.)

The Court of Appeals reached the factual conclusion that the organizational distinctions between the agency packing houses and the cooperative packing houses in the Sunkist System are unimportant to the cooperative marketing objectives of the Capper-Volstead Act, and that the Sunkist System is fully qualified under that Act.

The Circuit Court stated its conclusions carefully and clearly:

> "It will be noted from the Stipulation of the parties [footnote omitted] that the agency associations furnish their facilities and services on an

---

based on its assertion that Sunkist Growers was composed of seventeen individual members (designates of District Exchanges). Plaintiff claimed that, since it was not shown that these seventeen individuals produced more than 50% of the oranges in the Sunkist System, Sunkist Growers, Inc., could not be a qualified Capper-Volstead cooperative.

When the *Winckler* case was decided, the plaintiff recognized that this Court had laid down a rule that the 12,000 growers "are in practical effect and in contemplation of the statutes one 'organization' or 'association' even though formally organized into three separate entities. [Sunkist, Exchange Orange, and Exchange Lemon]." 370 U.S. 19, 29. This rule clearly destroyed plaintiff's initial position.

Plaintiff then abandoned its original claim, but on appeal asserted two others: (1) the one asserted here, *i.e.*, that participation by agency associations somehow causes the loss of the Capper-Volstead qualification; and (2) that the presence of corporate growers causes loss of the exemption. This second point has now apparently been abandoned.

independent contract basis, and that they do not participate in either gain or loss involved in marketing fruit through Sunkist. In other words, the growers receive full benefit of cooperative marketing through the agencies. . . . The agency associations supply services which the growers require (packing house facilities) in handling and marketing their products. The fact that 'packing is done by local associations . . . and the processing by separate organizations' does not preclude the growers from being considered one association for purposes of the Capper-Volstead Act. Sunkist Growers, Inc. v. Winckler & Smith Co., supra."

(*Case-Sawyne Co. v. Sunkist Growers, Inc.*, 369 F. 2d 449, 461 (1966).)

II.

PLAINTIFF'S ARGUMENT LACKS SUPPORT IN THE STATUTE OR CASE LAW.

A. Summary of Plaintiff's Argument.

The plaintiff never spells out the syllogism of its argument. Defendant confesses some uncertainty in characterizing plaintiff's argument, but plaintiff is apparently asserting the following position:

(i) Every "member" of a Capper-Volstead cooperative must be a grower, or the exemption of the Capper-Volstead statute is lost.

(ii) Agency Associations are "members."

(iii) Agency Associations are not all growers.

(iv) Therefore, Sunkist must lose the Capper-Volstead exemption.

B. Fallacies in Plaintiff's Syllogism.

There are two basic fallacies in the plaintiff's syllogism. *First,* there is no authority in the statute or in case law for the proposition that every "member" of a Capper-Volstead cooperative must be a grower. To the contrary, there are positive indications in the statute that all members need not be growers, and this Court in the *Winckler* case has already declared that all of the participants in this integrated structure need not be growers (*e.g.,* Exchange Orange Products and Exchange Lemon Products).

Second, for the purposes of the Capper-Volstead Act, the "members" are not the formal members of the corporation, but the individuals who receive the economic benefit of the cooperative activity. This Court has already pointed out that, in practical effect, the members of Sunkist are the growers who benefit by its activity.

1. An Agency Association May Be a Member Without Affecting the Capper-Volstead Exemption.

a. *The Capper-Volstead Act.*

Section 1 of the Capper-Volstead Act (7 U.S.C. §291) provides in part as follows:

> "Persons engaged in the production of agricultural products as . . . fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary

contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of members thereof, as such producers. . . ."

The Capper-Volstead Act contains several indications that non-growers may properly be a part of the overall structure.

(i) *Scope of collective action.* The Act contemplates much more than the production of fruit: it authorizes collective action involving "processing, preparing for market, handling and marketing." Those functions of course are not production functions, but the kind of function performed by Agency Associations, among others. The cooperative must therefore be authorized to obtain or employ the necessary services and facilities to accomplish these authorized ends.

(ii) *"Necessary contracts and agreements to effect such purposes."* The statute contemplates that the growers may contract with others to obtain the necessary services and facilities to accomplish the authorized activities. The Court of Appeals commented on this authority:

> "The independent contracts with the agency associations were for the legitimate objects of processing and marketing. Under the statute Sunkist could have entered into these contracts 'with separate organizations.' The mere fact that the agency associations constitute a 'class' of membership does not in our opinion change the effect of the agency agreements or destroy the exempt status of the entire association." (369 F. 2d 449, 462.)

(iii) "*For the benefit of the members, as such producers.*" The clear implication of this language from the Act is that members may be involved in some capacity *other than as producers.* Irrespective of these organizational details, however, the cooperative must be operated for their benefit as producers.

Sunkist meets this test. The economic benefits of collective action (and the risks) all are received (or borne) by the grower.

b. *The Presence in the Sunkist System of Non-Grower Entities Other Than Agency Associations Has Not Affected Sunkist's Capper-Volstead Qualification.*

It is worthy of note that the plaintiff has not attacked the Capper-Volstead qualification of the Sunkist System because District Exchanges are members, although District Exchanges, of course, are not fruit growers but simply another agent and instrumentality of the growers for bringing the fruit to market.

Perhaps more in point, the plaintiff has not challenged Sunkist's Capper-Volstead qualification because the cooperative associations are "members." Yet those associations are not growers. And they serve precisely the same functions as the Agency Association: they pick, wash, sort, grade and pack the fruit, and then ship to fill orders obtained by Sunkist as the marketing agency. Both kinds of associations return all of the benefit of cooperative marketing to the growers.

The situation here is quite similar to the one considered in detail by this Court in the *Winckler* case. There, the Court was considering the participation of the Exchange Orange Products Company and the Ex-

change Lemon Products Company which were separate corporations participating in the overall processing and marketing of the fruit. If Sunkist Growers, Inc. had issued a membership certificate to Exchange Orange Products or Exchange Lemon Products, the operation and effect of the entire system would not be changed. The *Winckler* decision makes it clear that the method used to tie the instrumentalities of the cooperative together are not material. The Court there reached the conclusion that in reality there was a single integrated structure, and the participation in the overall program by these two separate corporations was appropriate and did not cause the loss of the Capper-Volstead exemption. It is just as appropriate that the Agency Association participate to supply services needed by the members.

c. *There Is No Material Economic Significance in the Use of Agency Associations.*

The end result of the use of Agency Associations is the same as the use of Cooperative Associations. In both cases, someone must do the physical work. The Cooperative Association must have a manager and necessary employees. The Agency Association serves the same function. The only difference is that the Agency Association gives the growers an alternative to raising the immediate capital investment necessary to build the packing house. The economic effect on the grower, Sunkist, the consumer, and the public is ultimately the same.

2. For Purposes of the Capper-Volstead Act, Agency Associations Are Not "Members."

The second premise of the plaintiff, that agency associations are "members" of the Capper-Volstead or-

ganization, is not as sound as it might seem at first blush. It is true, of course, that under the bylaws of Sunkist Growers, Inc., all of the packing houses are "members" of the corporation. They are "members" in the sense that, under California statutes regulating nonprofit corporations, a nonprofit corporation has a board of directors and "members." However, membership within the formal corporate structure and membership for the purposes of the Capper-Volstead Act are quite different things.

In the *Winckler* case, this Court said that the formal corporate structure was not the key; that the real key was the "economic significance" of the entire organization:

> "With due respect to the contrary opinions of the Court of Appeals and the District Court, we feel that the *12,000 growers here involved are in practical effect and in the contemplation of the statutes one 'organization' or 'association' even though they have formally organized themselves into three separate legal entities.* To hold otherwise would be to impose grave legal consequences upon organizational distinctions that are of de minimis meaning and effect to those growers who have banded together for processing and marketing purposes within the purview of the Clayton and Capper-Volstead Acts. *There is no indication that the use of separate corporations had economic significance* in itself or that outsiders considered and dealt with the three entities as independent organizations. That the packing is done by local associations, the advertising, sales, and traffic by divisions of the area association, and the proces-

> sing by separate organizations *does not in our opinion preclude these growers from being considered one organization or association for purposes of the Clayton and Capper-Volstead Acts.*" (370 U.S. 19, 29.) [Emphasis added.]

The Court there was aware of the fact that the Sunkist System was organized as a pyramidal structure, whereby the growers were organized into packing houses, the packing houses were organized into District Exchanges, and the District Exchanges were organized into Sunkist Growers, Inc. The Court held, nonetheless, that in the sense of the Capper-Volstead Act, the members were the growers. We believe this is true with respect to the Agency Associations also, although that question was not specifically raised in the *Winckler* case.

We would, therefore, conclude that the members of the Sunkist System, for the purpose of applying the tests of the Capper-Volstead Act, are the growers who receive the economic benefit of the collective marketing system. In that sense, Sunkist Growers, Inc., the District Exchanges, and all of the packing houses other than the Corporate Growers are not "members" of the Sunkist System.

3. United States v. Borden Co., 308 U.S. 188 (1939) Has No Application to Determination of Capper-Volstead Qualification.

The Petition refers to the *Borden* decision (p. 11) as do portions of the dissenting opinion quoted in the Petition (p. 13). The suggestion seems to be that if the Agency Associations are simply agents brought in for the purpose of handling oranges, the *Borden* de-

cision would indicate that this arrangement is a conspiracy with an outsider and therefore might subject the cooperative to liability.

The suggestion was obliquely made in the Petition, perhaps because of its many apparent weaknesses. The Court of Appeals expressly pointed out the basic reason: hiring agents to do the work of processing and shipping oranges is the clearest kind of "legitimate cooperative activity" as defined by this Court in *United States v. Borden Co.*, 308 U.S. 188, 204 (1939), and *United States v. Maryland and Virginia Milk Producers Assn.*, 362 U.S. 458, 466 (1960). The Court of Appeals said:

> "The agency associations supply services which the growers require (packing house facilities) in handling and marketing their products. The fact that the 'packing is done by local associations * * * and the processing by separate organizations' does not preclude the growers from being considered one association for purposes of the Capper-Volstead Act. Sunkist Growers, Inc. v. Winckler & Smith Co., supra.
>
> This is not a case where the agreement in question goes beyond the legitimate objects of processing and marketing. See, e.g. United States v. Borden Co., 1939, 308 U.S. 188, 60 S.Ct.182, 84 L.Ed. 181. The Court there recognized that agricultural producers 'may unite in preparing for market and in marketing their products', and may 'make the contracts which are necessary for that collaboration', but they are not authorized to conspire with others in restraint of trade." (369 F. 2d 449, 461.)

Furthermore, the *Borden* question does not go to the issue of whether the cooperative is qualified under the Capper-Volstead Act; it goes only to the question of whether a *qualified* cooperative may have engaged in illegal conduct. And that question is answered by finding that the services performed by Agency Associations—namely, the picking, washing, sorting, grading, packing and shipping of oranges—constitute legitimate cooperative activities.

III.

CONCLUSION.

Respondent respectfully submits that the Petition should be denied.

Respectfully submitted,

CHARLES E. BEARDSLEY,
SETH M. HUFSTEDLER,
Attorneys for Respondent
Sunkist Growers, Inc.

DONALD D. STARK,
DALE V. CUNNINGHAM,
Of Counsel.

APPENDIX I.

[Names of Counsel, Title of Court and heading Omitted.]

Stipulation of Relevant Facts and Material Issues of Law Relative to Issue Raised by Capper-Volstead Defense.

By its answer to the complaint, defendant has asserted that it—and former defendants Exchange Lemon Products Company and The Exchange Orange Products Company during their corporate existences—is, and they were, duly qualified under Section 1 of the Capper-Volstead Act and entitled to the protection thereof. Based upon said claimed factual qualification, defendant has asserted a claimed defense to the charges or certain of the charges alleged in the complaint. Because the said issue of qualification under Section 1 of the Capper-Volstead Act, whether sustained or defeated, will materially affect the trial presentation by both plaintiff and defendant, it is the desire of the parties to obtain a determination by the Court of said issue on appropriate motion and ruling prior to trial.

To that end, the parties hereto have entered into this stipulation of the facts deemed by each to support its legal theory. In order to frame the legal issue as the same has been defined by counsel it was necessary to adopt, solely for purposes of this stipulation, certain estimates, approximations and generalizations as to which detailed information was not readily available or easily calculated. Accordingly, the facts herein stipulated to shall be deemed admitted and agreed upon for purposes of the determination of said issue in this action, but shall not be deemed admissions or statements of

fact by the parties or either of them for any other purpose or purposes.

Pursuant to the foregoing qualifications and for the purpose stated, the parties hereto, by and through their respective counsel, hereby stipulate that the following may be taken as and deemed to be admitted and true:

STIPULATIONS OF FACT

1. *Definition of Terms.* As used in this stipulation, the following terms shall have the meaning indicated in this paragraph:

(a) "Sunkist"—Sunkist Growers, Inc.

(b) "Exchange Orange"—The Exchange Orange Products Company.

(c) "Exchange Lemon"—Exchange Lemon Products Company.

(d) "1955 Agreement"—refers to the 1955 Sunkist-District Exchange Association Agreement, a copy of which is attached hereto as Exhibit "A".

(e) "District Exchange"—refers to the intermediate cooperative marketing agencies which are signatories to the 1955 Agreement.

(f) "Association"—refers to citrus packing houses which are signatories to the 1955 Agreement, which in turn are classified into three major groups:

(1) Cooperative Associations

(2) Corporate Growers

(3) Agency Associations.

(g) "Sunkist System"—refers collectively to the Associations and the growers shipping citrus fruit through them, the District Exchanges, Sunkist, Exchange Orange and Exchange Lemon.

2. *Cooperative Association.* The Cooperative Associations constitute 80.12% by number, and 82.34% by volume of fruit handled of all Associations in the Sunkist System. Such Associations are composed of growers who have joined together to market their fruit cooperatively, and for that purpose have acquired packing house facilities. All of the members of such Associations are fruit growers. Each such grower markets through the Association only the fruit which he produces. None of such Associations deals in the products of non-members in an amount greater in value than such as are handled by it for its members. In the aggregate, the non-member business of such Associations does not exceed ten percent (10%) of the value of all products marketed for members. None of said Cooperative Associations has ever paid dividends on its stock or membership capital in excess of 8% per annum. Some members of such Cooperative Associations are private corporations, which grow fruit, and which do not qualify as, nor do they claim to be, cooperative associations under Section 1 of the Capper-Volstead Act.

3. *Corporate Growers.* Associations which are Corporate Growers constitute 4.97% by number, and 4.72% by volume of all Associations in the Sunkist System. Such Associations are corporations which themselves grow citrus and whose total volume is sufficient to justify the installation of packing house facilities. Such Corporate Growers do not qualify as, nor are they claimed to be, cooperative associations under Section 1 of the Capper-Volstead Act. Such corporations market for their own account only the fruit which they produce and do not deal in the products of others in an amount greater in value than the quantity of products handled

for themselves. All products handled for others by such Corporate Growers are handled on an agency basis comparable to that of the Agency Associations.

4. *Agency Associations.* Agency Associations constitute 14.91% by number, and 12.94% by volume, of all Associations in the Sunkist System. The Agency Association is normally a private corporation which owns and operates packing house facilities. Some "Agency Associations" are individually owned enterprises and partnerships. Its stockholders may or may not be growers who ship fruit through the packing house owned by the corporation. That is, some have been fruit growers, and some have not been fruit growers. Where such is the case, the fruit of such stockholders is handled on a uniform basis with fruit of non-stockholders. Such Agency Associations do not qualify as, nor do they claim to be, cooperative associations under Section 1 of the Capper-Volstead Act. The packing house facilities of the Agency Association are made available to producers on the basis of the fruit being packed for market at cost plus a fixed fee. The Agency Association does not itself participate in either the gain or loss involved in marketing fruit through Sunkist beyond the recovery of its costs and fixed fee for packing. Such Agency Association furnishes its facilities and services on an independent contract basis, wholly unrelated to the net returns from the sale of the product handled. A contract between such an Agency Association and its growers which may be deemed as typical of such Associations is attached hereto as Exhibit "B".

5. *District Exchanges.* The District Exchanges are all membership corporations whose membership consists of Associations from one or more of the three

categories, to wit: Cooperative Association, Corporate Growers, and Agency Associations. None of the District Exchanges has ever paid dividends on its stock or membership capital in excess of 8% per annum. The District Exchange is not directly involved in the processing or marketing of fruit diverted to products utilization.

6. *Sunkist.* Sunkist is a membership corporation whose members prior to October 31, 1958, were individuals appointed by and representing each of the District Exchanges, on the basis of one member for each District Exchange. Such individual members have normally been growers, but some have not been. The amount of fruit marketed by such individuals through their local Associations, and thus through the Sunkist System, does not exceed 10% of the total fruit marketed by Sunkist. A copy of the Articles of Incorporation and By-laws of Sunkist which were effective during the period covered by this stipulation is attached hereto as Exhibit "C". A copy of a typical membership certificate issued during said period is attached as Exhibit "D". Sunkist has never paid dividends on stock or membership capital in excess of 8% per annum.

7. *Exchange Orange.* Exchange Orange was organized as a capital stock corporation under the general laws of California. A copy of its Articles of Incorporation and its By-laws are attached as Exhibit "E". Exchange Orange was during the period covered by this stipulation a wholly owned subsidiary of Sunkist, engaged in the processing and marketing of products oranges and grapefruit and the products produced therefrom. Exchange Orange has never paid dividends on its stock or membership capital in excess of

8% per annum. Exchange Orange and Exchange Lemon were engaged in producing a full line of citrus products. A description of the orange and grapefruit products is set out in the exhibit attached to Sunkist's answer to Interrogatory No. 2. (Identified in the pleadings as S-2-A-1 to S-2-A-25, and by this reference incorporated herein.) These products include juice products, such as single strength and concentrated juices, and peel products, including citrus oil, pectin, pharmaceuticals, cow feed, etc. All products so produced by Exchange Orange and Exchange Lemon were primarily citrus products, i.e., no products were produced in which a citrus derivative was a mere incidental ingredient.

8. *Exchange Lemon.* Exchange Lemon is a membership corporation whose members are the Associations who handle lemons; it is engaged in processing and marketing products lemons and the products produced therefrom. Exchange Lemon has never paid dividends on its stock or membership capital in excess of 8% per annum. The member Associations of Exchange Lemon include Cooperative Associations, Corporate Growers, and Agency Associations, as said associations are defined and described hereinabove.

9. *Sunkist System—History and Functional Development.* For purposes of describing the organization and functional development of the Sunkist System, the following brief history is set forth:

The California citrus industry dates its first major commercial development to the completion of the Southern Pacific line to Southern California in 1876. By 1885, Santa Fe had added its trackage and the Eastern markets were open.

The earliest shipments of oranges to the East in the 1870's were made by growers on an individual basis. Later, groups of neighboring growers joined together cooperatively to pool their fruit for purposes of sale. These informal groups had by 1892 begun to form into cooperative corporations.

In order to effectively market fresh citrus fruit in the major Eastern markets, it was necessary to have facilities where the fruit could be sorted, graded, washed, packed and shipped by rail. The earliest packing houses were commercial ventures. In their formative stages, the cooperative associations arranged to have their fruit packed by such packers under contract. The first cooperatively owned packing house facilities were acquired in the early 1890's. The concept of cooperative ownership of packing house facilities by the growers shipping through such facilities spread rapidly throughout the California citrus industry in the 1890's.

Early sales of oranges by pioneer growers in the 1880's had been to fruit buyers on an "on tree" basis. The local buyers soon sought to have the grower share the risks of the return on his fruit. Those risks were enhanced by the lack of understanding by buyers of the flow of fruit to the Eastern market—with the resulting glut of some markets and shortage in others.

The sales in the East, meantime, were being made by commission merchants interested primarily in volume and their consequent commissions, not in returns to the growers. After the disastrous marketing season of 1884-85, growers in the infant industry joined to form The Orange Growers Protective Union of Southern California, which for several years in the late 1880's suc-